

25 CFR Part 584

PART 584—APPEALS BEFORE A PRESIDING OFFICIAL OF NOTICES OF VIOLATION, PROPOSED CIVIL FINE ASSESSMENTS, ORDERS OF TEMPORARY CLOSURE, THE CHAIR'S DECISIONS TO VOID OR MODIFY MANAGEMENT CONTRACTS, THE COMMISSION'S PROPOSALS TO REMOVE A CERTIFICATE OF SELF-REGULATION, AND NOTICES OF LATE FEES AND LATE FEE ASSESSMENTS

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§ 584.1 What does this part cover?

(a) This part applies to appeals of the following where the appellant elects a hearing before a presiding official:

- (1) Violation(s) alleged in a notice of violation under § 573.3 of this chapter;
- (2) Proposed civil fine assessments under part 575 of this chapter;
- (3) Orders of temporary closure under § 573.4 of this chapter;
- (4) The Chair's decision to void or modify a management contract under part 535 of this chapter subsequent to initial approval;
- (5) The Commission's proposal to remove a certificate of self-regulation under part 518 of this chapter; and
- (6) Late fee notifications and assessments under part 514 of this chapter.

(b) Appeals identified in paragraph (a) of this section brought directly before the Commission on the written record and without a hearing are filed pursuant to part 585 of this subchapter.

§ 584.2 Who may appeal?

(a) Appeals of notices of violation, proposed civil fine assessments, orders of temporary closure, proposals to remove certificates of self-regulation, and late fee notifications and assessments may only be brought by the tribe or the recipient of the action that is the subject of the appeal.

(b) Appeals of the Chair's decisions to void or modify a management contract after approval may only be brought by a party to the management contract.

§ 584.3 How do I appeal a notice of violation, proposed civil fine assessment, order of temporary closure, the Chair's decision to void or modify a management contract, the Commission's proposal to remove a certificate of self-regulation, and a notice of late fees and late fee assessments?

(a) Within 30 days after the Chair serves his or her action or decision, or the Commission serves its intent to remove a certificate of self-regulation, the appellant must file a notice of appeal with the Commission. The notice of appeal must reference the action or decision from which the appeal is taken.

(b) Within 10 days after filing the notice of appeal, the appellant shall file with the Commission:

(1) A list of the names of proposed witnesses who will present oral testimony at the hearing, the general nature of their expected testimony, and whether a closed hearing is requested and the reason(s) therefor; and

(2) A brief that states succinctly the relief sought and the ground(s) in support thereof, which may include supporting documentation and evidence in the form of affidavits.

(c) A party that has filed a notice of appeal may waive the right to an oral hearing before a presiding official and instead elect to have the matter determined by the Commission solely on the basis of written submissions. Appeals based on written submissions are governed by part 585 of this subchapter. If there is more than one party that has filed a notice of appeal, and any party that has filed a notice of appeal elects a hearing before a presiding official, the entire matter will proceed before a presiding official.

(d) The Chair may file a response brief and a list of the names of proposed witnesses who will present oral testimony at the hearing, the general nature of their expected testimony, and whether a closed hearing is requested and the reason(s) therefor, within 10 days after service of the appellate brief.

§ 584.4 Are motions permitted?

Yes. Motions to intervene under § 584.5 are permitted. Motions for an extension of time that are filed before the appointment of a presiding official shall be decided by the Commission. All other motions may be scheduled and heard at the discretion of the presiding official.

§ 584.5 How do I file a motion to intervene?

(a) An entity or an individual, whether acting on his or her own behalf or as an agent of another entity not permitted to appeal, may be permitted to participate as a party if the presiding official finds that:

(1) The final decision could directly and adversely affect it or the class it represents;

(2) The individual or entity may contribute materially to the disposition of the proceedings;

(3) The individual's or the entity's interest is not adequately represented by existing parties; and

(4) Intervention would not unfairly prejudice existing parties or delay resolution of the proceeding.

(b) A tribe with jurisdiction over the lands on which there is a gaming operation that is the subject of a proceeding under this part may intervene as a matter of right if the tribe is not already a party.

(c) A motion to intervene shall be submitted to the presiding official within 10 days of the notice of appeal. The motion shall be filed with the presiding official and served on each person who has been made a party at the time of filing. The motion shall state succinctly:

(1) The moving party's interest in the proceeding;

(2) How his or her participation as a party will contribute materially to the disposition of the proceeding;

(3) Who will appear for the moving party;

(4) The issues on which the moving party seeks to participate; and

(5) Whether the moving party seeks to present witnesses.

(d) Objections to the motion must be filed by any party within 10 days after service of the motion.

(e) A reply brief to the brief in opposition may be filed within 5 days of service of the brief in opposition.

(f) When motions to intervene are made by individuals or groups with common interests, the presiding official may request all such movants to designate a single representative, or he or she may recognize one or more movants.

(g) The presiding official shall give each movant and party written notice of his or her decision on the motion. For each motion granted, the presiding official shall provide a brief statement of the reason(s) for the decision. If the motion is denied, the presiding official shall briefly state the ground(s) for denial. The presiding official may allow the movant to participate as *amicus curiae*, if appropriate.

§ 584.6 When will the hearing be held?

(a) The Commission shall designate a presiding official who shall commence a hearing within 30 days after the Commission receives a timely notice of appeal. At the request of the appellant, the presiding official may waive the 30-day hearing requirement upon designation.

(b) If the subject of an appeal is whether an order of temporary closure should be made permanent or dissolved, the presiding official shall be designated within 7 days of the timely filing of the notice of appeal, and the hearing shall be concluded within 30 days after the Commission receives a timely notice of appeal, unless the appellant waives this right. Notwithstanding any other provision of this part, the presiding official shall conduct such hearing in a manner that will enable him or her to conclude the hearing within the period required by this paragraph and consistent with any due process rights of the parties, including any period that the record is kept open following the hearing.

§ 584.7 When will I receive a copy of the record on which the Chair relied?

Within 10 days of the timely filing of a notice of appeal, or as soon thereafter as practicable, the record on which the Chair relied will be transmitted to the parties. In appeals dealing with temporary closure orders, the record will be transmitted within 5 days of the timely filing of a notice of appeal. Upon designation of the presiding official, the Commission shall transmit the agency record to the presiding official.

§ 584.8 What is the hearing process?

(a) Once designated by the Commission, the presiding official shall schedule the matter for hearing. The appellant may appear at the hearing personally, through counsel, or through an authorized representative consistent with the requirements of § 580.3 of this subchapter. The appellant, the Chair, and any intervenor shall have the right to introduce relevant written materials and to present an oral argument. At the discretion of the presiding official, a hearing under this section may include an opportunity to submit oral and documentary evidence and cross-examine witnesses.

(b) When holding a hearing under this part, the presiding official shall:

(1) Administer oaths and affirmations;

(2) Issue subpoenas authorized by the Commission;

(3) Rule on offers of proof and receive relevant evidence;

(4) Authorize exchanges of information (including depositions and interrogatories in accordance with 25 CFR part 571, subpart C of this chapter) among the parties when to do so would expedite the proceeding;

(5) Establish and administer the course of the hearing;

(6) When appropriate, hold conferences for the settlement or simplification of the issues by consent of the parties;

(7) At any conference held pursuant to paragraph (b)(6) of this section, require the attendance of at least one representative from each party who has authority to negotiate the resolution of issues in controversy;

(8) Dispose of procedural requests or similar matters;

(9) Recommend decisions in accordance with § 584.12; and

(10) Take other actions consistent with this part that are authorized by the Commission.

(c) The presiding official may order the record to be kept open for a reasonable period of time following the hearing (normally 10 days), during which time the parties may make additional submissions to the record, except that if the subject of the appeal is an order of temporary closure under § 573.4 of this chapter, the record will be kept open for a maximum of 10 days. Thereafter, the record shall be closed and the hearing shall be deemed concluded. Within 30 days after the record closes, the presiding official shall issue a recommended decision in accordance with § 584.12, except that if the subject of the appeal is an order of temporary closure under § 573.4 of this chapter, the presiding official shall issue a recommended decision within 20 days after the record closes.

§ 584.9 How may I request to limit disclosure of confidential information?

(a) If any person submitting a document in a proceeding claims that some or all of the information contained in that document is:

(1) Exempt from the mandatory public disclosure requirements under the Freedom of Information Act (5 U.S.C. 552);

(2) Information referred to in 18 U.S.C. 1905 (disclosure of confidential information); or

(3) Otherwise exempt by law from public disclosure, the person shall:

(i) Indicate that the whole document is exempt from disclosure or identify and segregate information within the document that is exempt from disclosure; and

(ii) Request that the presiding official not disclose such information to the parties to the proceeding (other than the Chair, whose actions regarding the disclosure of confidential information are governed by § 571.3 of this chapter) except pursuant to paragraph (b) of this section, and shall serve the request upon the parties to the proceeding. The request to the presiding official shall include:

(A) A copy of the document, group of documents, or segregable portions of the documents marked “Confidential Treatment Requested”; and

(B) A statement explaining why the information is confidential.

(b) If the presiding official determines that confidential treatment is not warranted with respect to all or any part of the information in question, the presiding official shall so inform all parties. The person requesting confidential treatment then shall be given an opportunity to withdraw the document before it is considered by the presiding official, or to disclose the information voluntarily to all parties.

(c) If the presiding official determines that confidential treatment is warranted, the presiding official shall so inform all parties.

(d) If the presiding official determines that confidential treatment is warranted, a party to a proceeding may request that the presiding official direct the person submitting the confidential information to provide that information to the party. The presiding official may so direct if the party requesting the information agrees under oath and in writing:

(1) Not to use or disclose the information except directly in connection with the hearing; and

(2) To return all copies of the information at the conclusion of the proceeding to the person submitting the information under paragraph (a) of this section.

(e) If a person submitting documents in a proceeding under this part does not claim confidentiality under paragraph (a) of this section, the presiding official may assume that there is no objection to disclosure of the document in its entirety.

(f) When a decision by a presiding official is based in whole or in part on evidence not included in the record, the decision shall so state, specifying the nature of the evidence and the provision of law under which disclosure was denied, and the evidence so considered shall be retained under seal as part of the official record.

§ 584.10 What is the process for pursuing settlement or a consent decree?

(a) *General.* At any time after the commencement of a proceeding, but at least 5 days before the date scheduled for hearing under § 584.6, the parties may jointly move to defer the hearing for a reasonable time to permit negotiation of a settlement or an agreement containing findings and an order disposing of the whole or any part of the proceeding.

(b) *Content.* Any agreement containing consent findings and an order disposing of the whole or any part of a proceeding shall also provide:

- (1) A waiver of any further procedural steps before the Commission;
- (2) A waiver of any right to challenge or contest the validity of the order and decision entered into in accordance with the agreement; and
- (3) The presiding official's certification of the findings and that the agreement shall constitute dismissal of the appeal and final agency action.

(c) *Submission.* Before the expiration of the time granted for negotiations, the parties or their authorized representatives may:

- (1) Submit to the presiding official a proposed agreement containing consent findings and an order;
- (2) Notify the presiding official that the parties have reached a full settlement or partial settlement and have agreed to dismissal of all or part of the action, subject to compliance with the terms of the settlement agreement; or
- (3) Inform the presiding official that agreement cannot be reached.

(d) *Disposition.* In the event a full or partial settlement agreement containing consent findings and an order is submitted within the time granted, the presiding official shall certify such findings and agreement within 30 days after his or her receipt of the submission. Such certification shall constitute full or partial dismissal of the appeal, as applicable, and final agency action.

§ 584.11 Will the hearing be transcribed?

Yes. Hearings under this part that involve oral presentations shall be recorded verbatim and transcripts thereof shall be provided to parties upon request. Each party shall pay its own fees for transcripts.

§ 584.12 What happens after the hearing?

(a) Within 30 days after the record closes, the presiding official shall issue his or her recommended decision, except that if the subject of the appeal is an order of temporary closure under § 573.4 of this chapter, the presiding official shall issue a recommended decision within 20 days after the record closes.

(b) The recommended decision shall be in writing, based on the whole record, and include:

- (1) Recommended findings of fact and conclusions of law upon each material issue of fact or law; and
- (2) A recommended grant or denial of relief.

(c) The presiding official's recommended decision is reviewed by the Commission. The Commission issues the final decision.

§ 584.13 May I file an objection to the recommended decision?

Yes. Within 20 days after service of the presiding official's recommended decision, any party may file objections with the Commission to any aspect of the decision and the reasons therefore, unless the

recommended decision is to dissolve or make permanent a temporary closure order issued under § 573.4 of this chapter, in which case objections to the recommended decision must be filed within 5 days after service of the recommended decision.

§ 584.14 When will the Commission issue its final decision?

(a) The Commission shall issue its final decision within 90 days after the date of the recommended decision or within 90 days after the date when objections to the recommended decision are filed or within 90 days after the conclusion of briefing by the parties, whichever comes later, unless the recommended decision is to dissolve or make permanent a temporary closure order issued under § 573.4 of this chapter, in which case the Commission shall issue its decision within 30 days of the recommended decision.

(b) The Commission shall serve its final decision upon the parties.